IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition 8743 of 2005

Chimanlal M Dhodi ..Petitioner

vs

Maniben Chndu Sukar Dhodi and ors..Respondents

Mr. D.R.Singh for petitioner

CORAM: S.U.KAMDAR J.

Dated 2l.l2.2005

P.C:

. Rule, returnable forthwith. Respondents are served. The learned counsel for the petitioners undertakes to file affidavit of service within one week from today.

. The present petition is challenging the order dated l8.l0.2005 by which the application for bringing the legal heirs of the deceased defendant nos 2 and 4 has been rejected. The only ground of rejection is the delay. The learned counsel for the petitioner has explained that the knowledge of death was only available in 2003 at the time when an application for setting side the exparte decree was filed and in affidavit in reply it was disclosed that defendant nos 2 and 4 have expired. Immediately thereafter he has taken out the present application. In my opinion in the light of the

Apex Court decision in Mithailal Dalsangkar Singh and ors vs Annabai Devram Kini and ors, reported in AIR 2003 SC 4244 particularly para 9 thereof, application for bringing the legal heirs on record and amendment thereof should be considered liberally. In that light of the matter the impugned order dated l8.l0.2005 passed by the learned Judge dismissing the Chamber Summons No.3l3 of 2005 and refusing to permit to bring the legal heirs on record of defendant nos. 2 and 4 is quashed and set aside. Chamber Summons No.3l3 of 2005 is granted. Petitioner is directed to carry out the amendment within three weeks from today. The petitioner to pay cost quantified at Rs.3500 to the respondent.

. Petition is made absolute accordingly.